

Thornton Davidson #166487  
Thornton Davidson & Associates  
Attorneys at Law  
2055 San Joaquin Street  
Fresno, California 93721  
Telephone: (559) 256-9800  
Facsimile: (559) 256-9791  
  
Attorney for Plaintiff, ROBERT CARSON

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

\* \* \* \* \*

ROBERT CARSON

CASE No.: 1:08-cv-468

Plaintiffs,

**COURT'S RULING ON SUPPLEMENTAL  
MOTIONS IN LIMINE**

vs.

THE CITY OF FRESNO, officer  
DAVE UNRUH, an individual,  
officer JOHN OVERSTREET, an  
individual, and DOES 1-40,  
inclusive.

Date: September 17, 2010  
Time: 1:30 p.m.  
Place: Courtroom 3  
Judge: Oliver W. Wanger

TRIAL DATE: September 23, 2010

Defendants.

On September 17, 2010, Plaintiff ROBERT CARSON, by and through his attorney of record, Thornton Davidson, and Defendants CITY OF FRESNO et al., by and through their attorney of record, Rosemary McGuire, appeared for a duly noticed hearing to argue the Plaintiff's Supplemental Motions in Limine. After hearing arguments of counsel and considering all facts and law applicable to these matters, the Court rules as follows:

A. Job Loss because of Drug Use Evidence

This motion is granted and such evidence will not be introduced or admitted.

1 B. Drug Abuse Evidence Generally

2 Granted in part and denied in part, as provided herein:

3 To the extent the plaintiff says his coins were long-ago acquired, before he ever used  
4 drugs, there would not be a foundation to admit evidence of drug abuse unless there is some  
5 evidence from some admissible source that Plaintiff was using drugs at the time. If, on the other  
6 hand, the Defense can show Plaintiff was doing drugs, in an FRE sec. 104 hearing, while Plaintiff  
7 was buying, selling, or trading the coins, then such evidence would be admissible.

8 The evidence about Plaintiff's admitted prior use as of December 1, 2006, and the fact  
9 Plaintiff was "coming off" drugs is relevant and admissible. The reference to methamphetamine  
10 as a reason for the 911 call is also admissible because it describes the background of the  
11 interaction and the purpose for the contact as well as the Officers' conduct.

12 On the issue of memory, the relationship to drug usage is admissible so long as there is  
13 some link between a relevant memory and the coins that are gone. The issue here is Plaintiff's  
14 long-term memory, in being able to know, to describe and to understand what coins where are,  
15 how many, what quality, what value, etc. In other words, whether Plaintiff was remembering  
16 when he was under the influence of drugs, what he did five years ago, ten years ago, three years  
17 ago, that doesn't matter as of the date of the incident with the police, what's his level of acuity and  
18 mental function to know what's there in the safe at the house. And so that's the seminal time to  
19 judge the effect of the drugs on his consciousness and awareness.

20 An additional inquiry that could be made is: If Plaintiff was using drugs, and based on that,  
21 Plaintiff told us that he gets confused, that he's not always fully conscious – fully conscious of  
22 what's happening, and therefore he wouldn't be in a position to know. But beyond asking  
23 Plaintiff whether during the period of time he was acquiring coins or storing or collecting them, he  
24 had any memory lapses or unexplained period while he was under the influence of drug, there is  
25 really no further inquiry. Defendants have to live with the answer.

26 Defendants may inquire about CARSON's motive or support for his drug habit. But,  
27 again, the Defendants have to live with the answer under FRE 608(d).

1 C. Joe Callanan's Report

2 Denied. Mr. Callanan's Rule 26 Expert Witness Report will not be published to the jury.  
3 Plaintiff's counsel may reference the report, express what's in it, and appear to hold it in his hand.  
4 When Mr. Callanan is in the stand, if he denies the content of his report, counsel may place it  
5 before and him ask him to read referenced sections.

6 D. Kincaid Issue

7 Based on the Court's characterization of the rulings in Kincaid v. City of Fresno as  
8 provisional, CARSON moved to dismiss his Monell claim against the CITY OF FRESNO. Such  
9 motion was granted.

10 E. Evidence Concerning Ratification by CITY

11 The Court reserves its decision on this matter.

12 F. Further Orders

13 Regarding CARSON's recently production (at his valuation deposition) of a detailed list of  
14 his losses, the Court orders the parties to collect the testimony and discovery requests regarding  
15 the identification of the coins.

16  
17  
18 IT IS SO ORDERED.

19 Dated: September 22, 2010

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE